



2010 Spring Caravan

6 hours Required

**Disclosure in an Internet World & Catch the Social Media Wave
Presented by Len Elder, DREI, CRS, Ed. D.**

Thursday, May 13 – **Rapid City** Ramkota, Rushmore Rm. – 2111 N. LaCrosse St.

Friday, May 14 – **Spearfish** Holiday Inn/Convention Ctr., – I-90 Exit 14

Monday, May 17– **Pierre** Ramkota –920 W. Sioux Ave.

Tuesday, May 18 – **Sioux Falls** Ramkota, 3200 W Maple St., **Washington Rm.**

Wednesday, May 19 – **Sioux Falls** Ramkota, 3200 W Maple St., **Annex**

Thursday, May 20 – **Watertown** Ramkota/Event Center, - 1901 9th Ave. SW

Friday, May 21 – **Aberdeen** Ramkota – 1400 8th Ave. NW

Registration begins at 8:15 a.m. Course is scheduled from 9 a.m to 4 p.m.
Pre-registration is required to guarantee admission and is STRONGLY ENCOURAGED.

Deadline to pre-register is May 10.

Registration Fee: \$50.00 (including cookies during morning break)
The Commission will retain \$20 of any refunded registration fee.

The SDREC has a strict attendance policy and expects participants to attend the entire session.
For access assistance, handicapped persons may call the Commissions office at (605) 773-3600.

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From the Directors Desk

After a very long winter, it seems spring is finally here. That means the Commission's Spring Caravan is just around the corner. As you know, the Commission tries to bring timely topics to you and this one is no exception. Please set aside time to attend.

If you attend the Spring Caravan, you will receive a free methamphetamine awareness video that was produced by Prairie View Prevention using a grant given by the South Dakota Real Estate Commission. The video consists of two short videos. One part is for real estate licensees and the other is to be used to show buyers or tenants the dangers of contaminants existing in properties that were used as meth labs.

The Commission's Auctioneer Task Force recently met for two days to draft new auction purchase and listing agreements. It is hoped to have final drafts of these forms later this summer. The task force also reviewed statutes and administrative rules and made several recommendations to bring them current with industry trends.

The 2010 Legislative Session has concluded but none of the new laws passed and signed by the Governor will affect the statutes under the Commission's jurisdiction.

With nicer weather on the way, I wish you a successful spring and for those of you who have been trying to get your signs in or out of the frozen ground, I hope you are now able to do so!

DjN



New Licensees

Auctioneer

Larsen, Jonathan R – Sioux Falls

Broker

Mueller, Eric S – Omaha, NE

Broker Associates:

Amos, Kevin J – Piedmont

Andersen, Brian J – Parker

Anderson, Jennifer – Sioux Falls

Barnett, Lori L – Black Hawk

Behrends, Brett W – Brookings

Bowers, Mark A – Sioux Falls

Breitling, Ryan – Sioux Falls

Buss, Waylin A – Sioux Falls

Carroll, Janet – De Smet

Dvorak, Raymond J – Piedmont

Garrett, Torey – Sioux Falls

Gonzales, Reynaldo – Brandon

Hanson, Timothy A – Sioux Falls

Heesacker, Marvin C – Piedmont

Hoyer, Danielle K – Sioux Falls

Johnson, Ross O – Spearfish

Karrels, Adam C – Sturgis

King, Jesse D – Sioux Falls

Larsen, Jonathan R – Sioux Falls

McNamee, Mark E – Laramie, WY

Miller, Becky J – Tea

Moe, Mitchell K – Spearfish

Nelson, Russell J – Lennox

Orrel, Barry L – Brandon

Pederson, Mark A – Bruce

Rezac, James L – Red Wing, MN

Selbo, Lorrie – Sioux Falls

Widmyer, David A – Garretson

Property Manager

Farrell, Martin A – Rapid City

McKeown, Ana – Sturgis

Trojanowski, Erin T – Rapid City

Volmer, Neil A – New Underwood

Home Inspector

Maurer, Steven P – Sioux City, IA

Royalty, Mark J – Rapid City

Residential Rental Agent

Dillon-Chauncey, Michelle L – Mission

Feiock, Kristin A – Pierre

Jacobson, Gretchen – Rapid City

Knutson, Christie L – Brandon

Schultz, Sara S – Sioux Falls

Salesperson

Davis, Pamela S – Sioux City, IA

Hunter, Casey R – Hulet, WY

Kuding, Steven A – Albert Lea, MN

STATE OF SOUTH DAKOTA SOUTH DAKOTA REAL ESTATE COMMISSION

IN THE MATTER OF A PETITION FOR A DECLARATORY RULING BY DEE JONES NOORDERMEER REQUEST FOR DECLARATORY 2010-01

Pursuant to the provisions of SDCL 1-26-15-1, I, Dee Jones Noordermeer of Pierre, South Dakota, am the executive director of the South Dakota Real Estate Commission, and do hereby petition the South Dakota Real Estate Commission for its declaratory ruling in regard to the following:

1. The state statutes in question are:

SDCL 36-21A-28 and 36-21A-29(10)

SDCL 36-21A-28. Acting as a licensee without license as a misdemeanor. No person may act as a licensee under this Chapter, assume to act as a licensee or advertise as a licensee without a license issued by the commission. No person may collect compensation as a licensee under this chapter without having first complied with the provisions of this chapter. A violation of this section is a Class 1 misdemeanor.

SDCL 36-21A-29. Persons and entities exempted from this chapter.

This chapter does not apply to the following:

(10) Any employee of any person enumerated in this section whose principal duties are other than those duties described in §§ 36-21A-6 and 36-21A-12, if engaged in the specific performance of the employee's duties.

2. The facts and circumstances which give rise to the issue to be answered by the Commission's declaratory ruling are:

The Commission has licensees with disabilities as defined in the Americans with Disabilities Act (ADA) or regulations promulgated thereunder. In the normal course of business, those licensees experience challenges which prevent them from performing certain duties on behalf of their clients. For instance, a licensee who relies on a wheelchair for mobility may be unable to show a property to a client because access is hindered by steps. Acting as a

licensee, assuming to act as a licensee, advertising as a licensee and receiving compensation for performing acts that require licensing by the commission are prohibited. Therefore, the licensee is unable to utilize the services of an unlicensed assistant to perform those prohibited acts to or on behalf of the licensee.

3. The questions to be answered by the Commission's declaratory ruling are:

Is the South Dakota Real Estate Commission authorized and willing to exempt from licensure an unlicensed assistant acting with a licensee disabled as defined under the ADA, to allow that unlicensed assistant to provide certain limited services normally required to be performed by that licensee. If so, under what conditions could such activity occur?

The precise issues to be answered by the Commission regarding that question are:

a. Is the Commission authorized to establish such a procedure?

b. Would the actions of the unlicensed assistant as set forth herein constitute principal duties other than those duties set out in SDCL 36-21A-6 and 36-21A-12?

c. Should the unlicensed assistant be under the direct supervision of the licensee and be employed by the licensee or the licensee's responsible broker?

d. Should the unlicensed assistant be first authorized in writing by the responsible broker to act in the requested capacity?

e. Should the licensee be required to remain physically as close as practical under the circumstances to the location where the activity is being performed by the unlicensed assistant?

f. Should the licensee be required to advise the client or customer in writing that the unlicensed assistant is not authorized to act as a licensee?

g. Should the responsible broker provide prior written notification to the Real Estate Commission that a specific unlicensed assistant will be acting with a particular licensee?

h. Should the responsible broker and licensee be required to confirm in writing to the Commission that the

appointment of an unlicensed assistant does not relieve their obligations and that they are responsible for the acts or omissions of the unlicensed assistant?

i. Must the licensee receive written acknowledgement of the filing of the notice with the South Dakota Real Estate Commission prior to the unlicensed assistant being authorized to act?

j. Should the acknowledgement be presented to and signed by the client or customer and be maintained in the broker's transaction file, readily available for Real Estate Commission review?

k. Should the responsible broker and licensee be required to confirm in writing to the Commission that their E&O coverage includes the acts or omissions of the unlicensed assistant?

l. Should the responsible broker submit regular reports to the Commission regarding the specific transactions or attempted transactions to which the unlicensed assistant provided licensed brokerage services on behalf of the licensee?

m. Should any questions presented to the unlicensed assistant by the client or customer be provided to the licensee for responses from the licensee?

n. Should the unlicensed assistant be expressly forbidden to express opinions as to the property being shown or any issues relating thereto?

o. Should the South Dakota Real Estate Commission confirm that §36-21A-71(35) prohibits a previously suspended or revoked real estate licensee from serving as an unlicensed assistant for a licensee with disabilities as defined by the ADA?

p. Should the unlicensed assistant be prohibited from sharing in the commission generated by the licensee's activities?

q. Should the Commission order that the unlicensed assistant's authority and activities be limited to only those required to reasonably accommodate the licensee's disability?

Decision

Therefore it is the decision of the South Dakota Real Estate Commission to make the following ruling:

If a licensee is a person with a disability as defined in the Americans with Disabilities Act or regulations promulgated thereunder, an unlicensed assistant may provide such additional services normally requiring a license under the following conditions:

(1) The actions of the unlicensed assistant as set forth constitute duties other than those duties set out in SDCL 36-21-6 and 36-21A-12;

(2) The unlicensed assistant must be under the direct supervision of the licensee;

(3) The responsible broker must confirm in writing that the unlicensed assistant, whether employed or not employed by the licensee or responsible broker, has current errors and omissions insurance coverage or is bonded for the services to be performed;

(4) The unlicensed assistant must be first authorized in writing by the responsible broker to act in the requested capacity;

(5) The licensee must to remain physically as close as practical under the circumstances to the location where the activity is being performed by the unlicensed assistant;

(6) The licensee must advise the client or customer in writing that the unlicensed assistant is not authorized to act as a licensee;

(7) The responsible broker must provide prior written notification to the Commission that a specific unlicensed assistant will be acting with a particular licensee. This written notification will include the duties to be performed by the unlicensed assistant;

(8) The responsible broker and licensee must confirm in writing to the Commission that the appointment of an unlicensed assistant does not relieve their obligations and are responsible for the acts or omissions of the unlicensed assistant;

(9) The licensee must receive written acknowledgement of the filing of the notice with the Commission prior to the unlicensed assistant being authorized to act;

(10) The Commission's written acknowledgement must be presented to and signed by the client or customer. The signed acknowledgement must be maintained in the broker's transaction

file, readily available for Real Estate Commission review;

(11) Any questions presented to the unlicensed assistant by the client or customer must be provided to the licensee for responses from the licensee;

(12) The unlicensed assistant is expressly forbidden to express opinions as to the property being shown or any issues relating thereto;

(13) A previously suspended or revoked real estate licensee may not serve as an unlicensed assistant for a licensee with disabilities as defined by the Americans with Disabilities Act;

(14) The unlicensed assistant is prohibited from sharing in the commission generated by the licensee's activities;

(15) The unlicensed assistant's authority and activities are limited to only those required to reasonably accommodate the licensee's disability.

DATED at Pierre, South Dakota this 24th day of March, 2010.

Dee Jones Noordermeer
Executive Director
SD Real Estate Commission
221 W. Capitol, Suite 101
Pierre, SD 57501

Be Seen and Be Social at the 2010 Spring Caravan!

The use of the internet and social media has become an integral part of today's real estate world. But do you know what risks are associated with it? Knowing how to properly use these tools and the pitfalls that should be avoided are highlighted in next month's caravan.

The SDREC is excited to welcome Len Elder to South Dakota. Len is CEO & owner of CourseCreators, a nationally-recognized education company based in Tucson, Arizona. Len's presentations for the caravan are "Disclosure in an Internet World" and "Catch the Social Media Wave".

Caravan date and location information is featured on the front page of this newsletter and the registration form is on the back page.

For more information on Len and his presentations – keep reading!



Caravan Featured Speaker: Len Elder

Len began his instructional days back in high school as a formidable member of his school's debate team. His level of debating mastery at this level was so recognized that he was granted a college scholarship to Capital University and served as the captain of that debate team. Len was chosen to represent the United States in The World Debating Competition. To be selected for this prestigious honor, Len and his debate partner had to rise above all other collegiate debate teams, as only one debate team was selected per year. Out of the 100 teams from all over the world that competed in this Olympic size event, Len's earned the 10th place position. Being so influenced by this success, after his college graduation, he remained with his university as an Assistant Professor of Debate and Argumentation. During that time, he studied for and obtained his law degree and for the next 7 years, he practiced law as a trial lawyer, influencing many judges and jurors. After retiring from law, he also embarked on a career in the real estate industry, first on the mortgage side and then on the Realtor side. Once again, his ability to each, train and persuade were highly recognized, so much so that the Hogan School of Real Estate invited Len to become part of their staff as a lead instructor. For the past 10 plus years, as a Mortgage Broker, Realtor, Real Estate Broker and Educator, Len has been and still is creating and delivering training programs, some of which are mentioned here: Prelicensing Courses, Continuing Education Courses, Approved Arizona Department of Real Estate Courses, Approved Real Estate Online Courses, Broker Management Courses, and National Association of Realtors Designation Courses.

Disclosure in an Internet World "Disclosure Explanations You Can Use & share with Clients on the Internet"

A real world disclosure class with tools you can use. Understand the wealth of information at the fingertips of real estate professionals and our clients and customers. We will show you how to increase your productivity and business by sharing disclosure information on the internet. We should all know how to create links and use the internet to disclose information.

Catch the Social Media Wave

"Don't get left behind. The time is NOW!" In today's business world, social media is not a passing phase. It is here to stay. Therefore, your future is directly tied to your understanding of what social media is, how it works, why it works and how you can use it to become more successful! And if you are struggling with questions like: "Where do I begin?" "What exactly should I do?", don't worry! We give you a simple 5 step plan to follow in 2010!



www.CourseCreators.com



SDREC Calendar of Events

**May 12-13 – Commission
Meeting, Rapid City**

**May 31 –
SDREC Office Closed,
Memorial Day Holiday**

**June 23-24 – Commission
Meeting, Pierre**



Free Methamphetamine Awareness Video Available at the Spring Caravan

Attendees of the Spring Caravan may pick up a free copy of the meth awareness video produced under a partnership between the SD Real Estate Commission and Prairie View Prevention Services. The two-part video may be used for training purposes for licensees concerning meth-related property issues as well as a tool for licensees to inform their buyer-clients of these hazardous situations.

Disciplinary Action

The following disciplinary actions have become effective since the last report in the newsletter. A Stipulation and Assurance of Voluntary Compliance is a settlement agreement between licensees and the Real Estate Commission and constitutes neither an admission nor a denial of any violation.

James Lee, Sioux Falls, Broker Associate. Findings of Fact, Conclusions of Law, and Order. Revocation of License. Penalty of \$2,500 and costs of \$5,010.60.

Violation of SDCL 36-21A-71(14),(24),(30), SDCL 36-21A-132(2),(3) and ARSD 20:69:16:07 for failure to deliver closing statement; unlawfully engaging in the practice of law by preparing a promissory note to accompany a Quit Claim Deed; failing to protect and promote the best interests of the client; failure to exercise reasonable skill and care; and breach of duty to responsible broker for failing to keep the requisite documents in the office file.

Kayleen Swanhorst, Sioux Falls, Broker. Findings of Fact, Conclusions of Law, and Order. Revocation of License.

Violation of SDCL 36-21A-71(17). The Commission has established by clear and convincing evidence that Ms. Swanhorst has committed

unprofessional conduct due to the suspension of her Appraiser license.

Tobin Karn, Rapid City, Broker. Findings of Fact, Conclusions of Law, and Order. Revocation of License. Penalty of and costs of \$

Violation of SDCL 36-21A-71(6) and (17). The Commission has established by clear and convincing evidence that Mr. Karn has committed unprofessional conduct as he has been convicted of two felonies and has been disbarred from the practice of law by the SD Supreme Court.

Citations Issued

The Commission established the Citation Program to diminish the number of license law violations, decrease time required to bring licensees into compliance and to recover costs involved when action is required.

The following individuals and/or firms have been issued citations. Each licensee/company has agreed to a Stipulation of Assurance and Voluntary Compliance and has satisfied the requirements of the stipulation.

Failure to comply with auction listing requirements:

Vernell Qualm, Platte, Auctioneer. \$100 penalty.

Duane Schmidt, Bancroft, Auctioneer. \$100 penalty.

Failures to renew, maintain, or provide notification of errors & omissions insurance:

Tyler McGregor, Salem, Broker Associate. \$50 penalty

Charlie Even, Watertown, Broker Associate. \$50 penalty

Jill Jonnes, Sioux Falls, Broker Associate. \$50 penalty

Darrin Rogers, Sioux Falls, Broker Associate. \$50 penalty

Mandy Austin, Viborg, Residential Rental Agent. \$50 penalty

Unlicensed activity due to late renewal or failure to comply with renewal requirements:

Kim Petit, Sioux Falls, Broker Associate. \$50 penalty

Cody Belitz, Sioux Falls, Broker Associate. \$50 penalty

Kyle Lalim, Watertown, Broker Associate. \$50 penalty

Senta Pfeiffer, Sioux Falls, Broker Associate. \$50 penalty

Unlicensed real estate firm activity due to late renewal of firm license:

Bradeen RE & Auct., Inc. & The RE Center of Custer (Ronald Bradeen). \$50 penalty

VIP Properties, Rapid City (Stephanie Lien). \$50 penalty

South Dakota Real Estate VIEW

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Articles by outside experts express the author's particular viewpoints. These opinions are not necessarily shared by the Commission, nor should they be mistaken for official policy. The articles are included because they may be of interest to the readers.

Washington-At-A-Glance: U.S. Agencies Continue Program Adjustments

(used with permission from ARELLO)

U.S. federal government agencies and government-sponsored enterprises (GSEs) continue to adjust existing programs to address continuing U.S. housing market and related headaches. Here are some brief highlights:

FHA Waives Anti-Flipping Rule

Until recently, FHA rules have prohibited insuring a mortgage on a home that has been owned by the seller for less than 90 days. The rule was put in place to address "property flipping" schemes in which properties are acquired, and then quickly resold for a considerable profit at an artificially inflated price. Commencing February 1, HUD/FHA waived the rule for a period of one year. HUD said that the 90-day rule discouraged sellers from considering offers from potential FHA buyers because of holding costs and the risk of vandalism to vacant properties. Because tightened credit markets often leave FHA-insured mortgages as the only financing option, HUD says that buyers will now be encouraged to use FHA-insured financing to purchase HUD-owned properties, bank-owned properties and private resales. [Detailed standards](#) have been put in place to protect against unscrupulous practices.

Earlier Relief for At-Risk Homeowners

In late January, the U.S. Department of Housing and Urban Development (HUD) announced that, effective immediately, it will provide earlier access to its [Home Affordable Modification Program \(FHA-HAMP\)](#). The agency has broadened the definition of a qualified "FHA borrower facing imminent default" to include a homeowner with a FHA-insured mortgage loan "who is current or less than 30 days past due on the mortgage obligation and is experiencing a significant reduction in income or some other hardship that will prevent him or

her from making the next required payment on the mortgage during the month that it is due." Previously, loan modification assistance was only available to homeowners who had missed payments. More information is available through [HUD's Mortgagee Letter 10-04](#).

3.5% Seller Assistance for Fannie Mae-Owned Properties

To reduce its inventory of vacant homes, purchasers of certain Fannie Mae-owned properties will receive up to 3.5 percent of the final sales price to be used toward closing costs or to purchase appliances. The government-sponsored enterprise (GSE) is making the offer available to owner-occupants who close on an eligible property listed on the GSE's [HomePath®.com](#) Web site before May 1, 2010.

FTC "Red Flags Rule" Kicks In June 1, 2010

After several delays in implementation, the Federal Trade Commission's (FTC) identity theft "Red Flag Rules" are scheduled to finally take effect on June 1, 2010. The "Red Flag Rules" require certain creditors and financial institutions with "covered accounts" to implement programs to detect and respond to potential identity theft. The applicable definition of a "creditor" includes any entity that regularly extends or renews credit *or arranges for others to do so*. According to the National Association of REALTORS® (NAR) *Washington Report* (April 6, 2009), a real estate agent may be considered a "creditor", and therefore subject to the rules, if the agent "regularly arranges for credit to be extended, e.g. regularly pulls credit reports, suggests potential lenders or helps with loan applications." The *Washington Report* (November 9, 2009) also indicated that, while the association has argued that real estate agents do not typically arrange for credit, the latest implementation delay will allow the FTC to finalize special compliance guidance for "low risk entities" such as real estate agents. More information is available at www.ftc.gov/redflagsrule.

FHFA Limits GSEs

The U.S. Federal Housing Finance Authority (FHFA), an agency that oversees U.S. GSEs, has announced that Fannie Mae and Freddie Mac will not be allowed to introduce new loan products into the marketplace or undertake initiatives to lower mortgage interest rates once the U.S. Federal Reserve's mortgage-purchase program expires at the end of the first quarter of 2010. FHFA placed the two mortgage financing GSEs into conservatorship in September 2008.

Public/Private Coalition Launches Nationwide Loan Modification Scam Database

(used with permission from ARELLO)

The U.S. Department of Housing and Urban Development, in partnership with the Loan Modification Scam Prevention Network (the Network), recently announced the launch of PreventLoanScams.org, a new web site that provides homeowners and others with a single web destination to report loan modification scams.

The website will serve as a clearinghouse for information about loan modification scam complaints and enforcement actions. Trained volunteers will contact complainants and conduct substantive intake in order to collect detailed information about scammers and how they operate. Complaints filed online will be added to a national complaint database and automatically forwarded to the Federal Trade Commission's Consumer Sentinel Database. With the express permission of homeowners, complaint information will also be forwarded to appropriate state and local law enforcement agencies.



APPRAISER UPDATE

This section of the South Dakota Real Estate Review is the responsibility of the South Dakota Dept. of Revenue & Regulation Appraiser Certification Program. Articles are printed here to communicate pertinent information to those appraisers who receive this newsletter and are licensed under the Certification Program. Appraiser certification inquiries can be directed to Sherry Bren, Program Administrator, 445 E. Capitol, Pierre, SD 57501, 605-773-4608

Appraiser Certification Program Mission–Purpose–Intent

The Appraiser Certification Program was implemented July 1, 1990, pursuant to enactment of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by Congress. The mission of the Program is to certify, license and register appraisers to perform real estate appraisals in the state of South Dakota pursuant to Title XI (FIRREA). The purpose of the Program is to examine candidates, issue certificates, investigate and administer disciplinary actions to persons in violation of the rules, statutes and uniform standards, and approve qualifying and continuing education courses. Title XI intends that States supervise all of the activities and practices of persons who are certified or licensed to perform real estate appraisals through effective regulation, supervision and discipline to assure their professional competence.

Appraiser Certification Program Advisory Council

Council members provide recommendations to the Secretary of the Department of Revenue and Regulation in the areas of program administration in order to sustain a program that is consistent with Title XI. The Council meets quarterly in public forum. See the Website for meeting information. www.state.sd.us/appraisers

NOTICE - Avoid the Penalty Administrative Rule Changes - 7-Hour National USPAP Update Course

Failure to complete the Update Course between January 1, 2010 and June 30, 2010 will result in a \$100 penalty in accordance with SDCL 36-21B-7 for violation of ARSD 20:14:13:01.

According to the administrative rules regarding appraisers, each applicant for renewal of a certificate or license in 2011 must successfully complete the 2010-2011 Edition of the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course within the following time period:

January 1, 2010 and June 30, 2010

See ARSD 20:14:13:01. An applicant for renewal of a certificate or license must successfully complete the most current edition seven-hour National Uniform Standards of Professional Appraisal Practice Update course prior to June 30 of each even-numbered year.

Please visit the Appraiser Certification Program Website at www.state.sd.us/appraisers for a list of approved courses which includes the USPAP Update Course. If you have any questions, please feel free to contact Sherry Bren by mail at Appraiser Certification Program, 445 E. Capitol Ave., Pierre, SD 57501; by telephone at 605.773.4608; or by E-mail at Sherry.Bren@state.sd.us.

New Licensees – February/March 2010

Jesse W. Cantalope, State-Registered – Brookings, SD
Travis Shaykett, State-Registered – Sioux Falls, SD
David J. Bartlett, State-Certified General – LaGrange, WY
Jarrett J. Mackey, State-Licensed – Rapid City, SD

Information Regarding Disciplinary Actions

Public information regarding disciplinary action taken against an

appraiser is available upon written request to the Dept. of Revenue and Regulation, Appraiser Certification Program, 445 E. Capitol Ave., Pierre, SD 57501 or e-mail – Sherry.Bren@state.sd.us. Include in the request for information the name of the appraiser and the appraiser's city and state of residence. (Disciplinary action may include denial, suspension, censure, reprimand, or revocation of a certificate by the department. (ARSD 20:14:11:03))

Anonymous Complaints

ARSD 20:14:11:01.01. Anonymous complaints. Initiation of an investigation may be commenced upon receipt of an anonymous complaint if it meets the following criteria:

(1) The allegations of violations of any provision of this article are considered credible and based upon factual information which is independently verifiable; and

(2) The complaint is accompanied by a copy of the appraisal report or other documents which contain clearly identifiable errors or violations of the provisions of this article.

Review of Cases – 1/1/10 – 3/15/10

For the period 01/01/2010 through 03/15/2010, the Department has received 5 upgrade applications and initiated 4 complaint investigations.

Upgrades – 5 pending.
Complaints – 4 pending.

Upgrades – January / February / March 2010

Steve Kubik, State-Licensed
Scott Elwood, State-Certified General
Lisa Jensen, State-Certified Residential
Neil Melby, State-Certified Residential

Defend Your Reputation with Appraisal Workfiles

A proper workfile is something integral to every commercial or residential real estate appraiser since it can be a crucial benefit when defending yourself against legal or administrative allegations. Since most appraiser Error and Omissions claims are made 18 months to three years after the appraisal was completed, a well-prepared and documented workfile will lead you back to that exact moment. A workfile prepared in anticipation of litigation is a powerful tool in limiting your exposure and defending your reputation. The suggestions herein, along with the record-keeping requirement of the Uniform Standards of Professional Appraisal Practice, will result in such a document.

Keep Each File in Anticipation of Litigation

If a claim or lawsuit is filed, will you be able to reconstruct what you did and how you did it, based on the contents of your workfile? If the file contains nothing but your original assignment sheet and a copy of the appraisal, the answer to this question will likely be “No!”

The file must contain enough information to support and justify the

work performed and the final conclusion. The file should also have enough additional information to help refresh your recollection about the assignment, especially if you use trainees or contract appraisers who may no longer be around.

Another thing to consider is the appearance of the file. In most cases, a copy of the workfile must be turned over to the party who is making the claim as part of the “discovery” process. What does your workfile say about you as an appraiser? That you are organized, neat and detail-oriented or that you are sloppy, disorganized and unprofessional?

Many appraisal offices have moved toward a “paperless” system. This is fine as long as the appraiser continues to focus on keeping a complete and well-documented electronic workfile. This means scanning supplemental documentation such as Post-its, phone notes and call slips. An electronic version of anything that would have been in the physical workfile must be scanned, properly labeled and saved in a format that can be reliably viewed at a later date.

Be very careful when you store photos on your computer hard drive. We see numerous instances of hard drive crashes or of photos being lost. The photos are no good to you if they cannot be accessed when a claim is made.

Assignment Sheets

It is a good idea to always keep a copy of the assignment sheet in your workfile, including those you received via e-mail. The assignment sheet can be very helpful if questions arise about the client, the exact scope of the assignment, any assumptions to be made by the appraiser and the response time; it will also tell if you are dealing with a client that communicates “a must-hit number” or a narrow range of values.

Research Data

It is crucial that the workfile contains any supporting data that was used to prepare the report. No appraiser can count on being able to go back and reconstruct their research years later when a claim is made unless complete and relevant documentation is kept in the workfile.

If public records were consulted for zoning or square footage, print out what you review and keep it in the file. A printout showing a date recent to the date

of the appraisal conveys the fact that you did thorough research. Supporting documentation with a date after the lawsuit was filed implies that you were going back after the fact to try and support your report. The same applies for MLS information. Will you be able to find the MLS information that you reviewed online today three years from now?

It is best to have as much data on comparables in the file as possible. Make sure your comp research was broad and did not just focus on a target or narrow value range. Keep copies of rejected comps that appeared to be comparable but were disregarded with clear notes as to why they were not used. Include notes documenting which real estate agents were called for further information about the comp sales or the subject.

Before storing the file, look over your handwritten notes. If it was important enough for you to write down, you must be able to read it. Too often appraisers are unable to read their handwriting years later when a claim occurs.

Information from Other Sources

Information used in the report is often given to the appraiser from other sources. It might seem convenient that someone else has already done the work, but information provided by others, no matter how reliable they may seem, must still be verified. Evidence of the steps taken to verify should be clearly set forth in the file.

Rental and income figures provided by others – no matter how nicely bound or presented the information might be – still have to be checked. If the appraiser is unable to verify the information provided, that should be stated clearly both in the report and in the file.

Sometimes an appraiser is given a prior appraisal of the subject property. Resist the urge to “borrow” information – e.g., square footage figures – from the prior appraisal as there is no guarantee that the information is accurate. Measure the subject yourself; many times the prior appraiser was wrong. The appraiser who is now defending the claim rarely has a good excuse for this behavior and makes legal defense of the claim tougher.

Appraisers are frequently provided copies of building plans to review when preparing a report. The plans must be

returned upon completion of the assignment. The problem is that plans are often changed or revised during construction. Just as often, the appraiser is inadvertently or intentionally not told of the revisions. Some appraisers do make copies of the plans at their cost. Others simply copy something on the plans that shows the date or some other distinguishing marks. Hopefully the appraiser can show some evidence of which plans they were provided if questioned.

Interior Photos

We strongly recommend that interior photos be taken of every property appraised. Photos can help you document conditions that existed at the time you walked through the property. When a loan goes into default, often the borrower has not maintained the property's appearance. Some borrowers may damage their property or others may vandalize a property that sits vacant. When the lender gains possession of the property, they may find the property is in far from "good condition" as stated in the appraisal, and they are quick to point a finger at the appraiser. It is nice to be able to flash a few photos to show the house was clean and well-maintained when you inspected it, which will help prove that it did not have missing fixtures or holes in the walls like it did after foreclosure.

The same applies to claims alleging failure to note defects. For example, you note some hairline cracks. It could be normal settling, but it may be a bigger issue where the seller is withholding information in an effort to sell the home. A few photos can prove the property's condition at the time you were there.

Water damage is another area where photos kept in the file can help. Is it the remnants of an old roof leak that has been fixed, or is it evidence of a condition that might lead to mold growth? A photo provides clear evidence of what was and wasn't there when you were on the premises.

Lastly, interior photos can help to refresh your recollection about the property. If you get sued three years after completing your appraisal, will you remember the property you appraised? Photos can be an enormous help in jogging your memory.

General Notes and Message Slips

You should write down every thought and keep every paper scrap related to an appraisal, because you never know what might be important. You may have had a significant phone conversation with a client about an extraordinary assumption, yet there are no file notes. Months later, someone might call and ask that a copy of the appraisal be provided to the borrower. If questions arise about whom the appraiser spoke to or when the borrower received a copy of the report, the appraiser might remember. However, that is not usually the case. General notes kept in the file can be used as evidence and are very persuasive to a judge or jury.

Tell-Tale Claims Sands of Time

An appraiser was hired to appraise a commercial sand pit. Besides determining the land value, he had to value the sand. The appraiser contacted many contractors, haulers and sand pit operators to determine the sand's value. The workfile had a complete listing of all the contacts. The list was very informative, including such information as when calls were made, who the appraiser spoke with, who was unwilling to share information and even who never returned his calls. The sand pit operator eventually defaulted on the loan. The appraiser received a letter from the lender claiming the property had been overvalued, in part, because the value of the sand was overstated.

If the appraiser's sand value was overstated, it had nothing to do with his failure to research available sources of information. The lender's counsel was very impressed with how the workfile was maintained. The volume of neat and orderly documentation confirmed the professionalism of the appraiser. The notes he had about who he called, when he called, and what they said was proof his research was thorough and fully documented. The plaintiff quickly agreed to drop the allegation against the appraiser.

Not All It's Cracked up to Be

During an assignment on a new purchase loan, an appraiser found that while the home looked ordinary, the two-car garage was completely filled with boxes and cartons that covered the entire floor space and were stacked floor to ceiling. He thought it was odd since the rest of the home was pretty clutter-free, and he was compelled to snap photos of

the garage. The appraiser's instincts were right on.

Months later, he was served with a lawsuit filed by the new owners. They claimed that after the sellers vacated the house and cleared the clutter from the garage, they discovered a huge crack in the garage floor. The new owners had a contractor advise that the house would have to be lifted off the foundation for an adequate repair. The entire cost to repair the foundation and resulting structural damage was almost as much as the appraised value.

The appraiser was dismissed early from the case due to his photos, which proved that he could not have seen the cracks in the garage floor. He also noted in the report that he could not do a complete inspection of the garage due to the amount of clutter and debris. The plaintiffs' counsel was happy to dismiss him and used his photos to get a large settlement from the sellers, claiming they had intentionally concealed the foundation crack by filling the garage with boxes and clutter.

Judge Rules the File Speaks for Itself

An appraiser delivered his appraisal to his lender-client and a week later received a request for a copy of the appraisal from the personal guarantor of the loan. The appraiser got permission from his client and hand-delivered the report to the guarantor's office. The guarantor eventually sued the appraiser and claimed that he had relied on the appraisal when deciding to sign the guarantee. The guarantor testified that he received a copy of the report a full week before the papers were signed. Besides the appraiser's contradicting testimony, his workfile also contained phone message slips and a log that showed when he delivered all of his reports. At trial, the judge ruled in favor of the appraiser on several issues. However, in the judge's written opinion, he specifically noted that the appraiser was found to be more credible than the guarantor/plaintiff due to the manner in which the workfile and his business records were maintained. Case closed! [This article by Liability Insurance Administrators (www.liability.com) originally appeared in Valuation magazine. Copyright 2009. Appraisal Institute. All Rights Reserved.]

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**2010 Spring Caravan Registration – Disclosure in an Internet World &
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One registration form per person!

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(Mailing Address) (City) (State) (Zipcode) (Daytime Phone)

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Please check which you would like to attend. Registrations left blank will be returned.

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|--|---|---|
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| <input type="checkbox"/> Aberdeen – Fri., May 21 | | |

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Registrations are due by Monday, May 10th.